IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	)	
	)	
v.	)	I.D. No. 0601012860
	)	
HILLARD WINN,	)	
	)	
Defendant.	)	

Submitted: June 2, 2006
Oral Decision: June 5, 2006
Written Decision: July 3, 2006

Upon Consideration of Defendant's Motion to Suppress.
GRANTED.

O R D E R

This 21st day of June, 2006, upon consideration of the Motion to Suppress brought by Defendant, Hillard Winn ("Winn"), it appears to the Court that:

1. On January 18, 2006, at 9:52 a.m., Officers Robert Fox ("Officer Fox") and James MacColl ("Officer MacColl") (collectively "the Officers") of the Wilmington Police Department ("WPD"), while on routine patrol, observed a green Chrysler Sebring traveling West-bound in the 1100 block of West 3rd Street in Wilmington, Delaware. The Officers observed that the operator of the Chrysler,

Winn, was not wearing his safety belt and subsequently stopped the vehicle for that violation in the 1000 block of West 3rd Street.[1]

2. The Officers recognized the vehicle Winn was driving from an incident five days prior when the Officers arrested Amanda Taylor ("Taylor"), the owner of the vehicle in question, along with her companion, Reddin Hailey ("Hailey"), for use of an illegal firearm and possession of cocaine. On that prior occasion, Taylor and Hailey were allegedly seen sitting inside the Chrysler Sebring when Hailey stepped out of the vehicle, pulled a shotgun out from the street curb adjacent to where the vehicle was parked and threatened nearby pedestrians. Although the facts are unclear, it is the Court's understanding from Officer Fox's testimony that the firearm was not taken from inside the vehicle. All parties, including the Officers, agree that Winn was not involved in this particular incident.[2]

3. After realizing they recognized the vehicle, Officer Fox ran the license plate and learned that the vehicle had not been reported stolen. Officer MacColl approached Winn, who was in the driver's seat, and asked him to produce his driver's license, registration, and proof of insurance. Winn complied and Officer MacColl handed the documents to Officer Fox who checked their validity. This check revealed that both the driver's license and registration were valid. Officer MacColl continued to speak with Winn and, consistent with his routine practice,

[1] *See* Docket Item ("D.I.") 9, Ex. A.

[2] *See* D.I. 23 at 9, 15, 19-20, 36-37.

asked Winn if "there was anything in the vehicle [he] should know about – weapons, guns, bombs?"[3] Winn responded in the negative. Officer Fox, at the time, was positioned at the rear of Winn's vehicle. Officer MacColl then walked back to his squad car and began to write up the ticket for the seatbelt violation.

4. Several minutes later, Officer MacColl returned to Winn's vehicle, but did not provide the traffic summons to Winn at that time. Instead, Officer MacColl resumed his questioning of Winn. He testified that at no time did he fear for his safety. After brief questioning, Officer MacColl asked Winn if he could search the vehicle. Winn testified that he voiced his refusal to consent to the search several times. Officer MacColl testified that he did not hear a response from Winn either in the affirmative or negative. At some point, the driver's door was opened, either by Winn himself or with the assistance of Officer Fox. Winn then stepped out of the vehicle. According to Winn, he tried to close the car door, but Officer MacColl held it open and began to pat him down.[4]

5. Officer Fox, witnessing the patdown, approached the driver's side of the vehicle. According to Winn, Officer Fox began a thorough search of the inside compartment of the vehicle. Officers Fox and MacColl testified that Officer Fox did not get a chance to search the vehicle because immediately upon his approach he noticed a brown paper bag located on the ledge between the driver's seat and

[3] *Id.* at 9-12.

[4] *Id.* at 13-14, 28, 41.

the driver-side door. Officer Fox observed a small hole in the paper bag through which he saw bags containing a white substance he suspected to be heroin. Winn was subsequently handcuffed and taken into custody along with the substances which later tested positive for heroin.[5]

6. On January 18, 2006, Winn was charged with one count of Maintaining a Vehicle for Keeping Controlled Substances in violation of DEL. CODE ANN. tit. 16, § 4755 (a)(5), Possession of a Narcotic Schedule II Controlled Substance in violation of DEL. CODE ANN. tit. 16, § 4753, Possession of Drug Paraphernalia in violation of DEL. CODE ANN. tit. 16, § 4771, and Driving Without a Seatbelt in violation of DEL. CODE ANN. tit. 21, § 4802 (a)(1).[6] On May 4, 2006, Winn filed a Motion to Suppress the heroin seized from the vehicle.[7] The Court held a hearing on the motion on June 1, 2006.[8]

7. In his motion, Winn contends that he did not consent to the search of his person or the inside of the vehicle and that the Officers lacked probable cause to arrest him. He further asserts that there are inadequate facts in the record to support a finding that Officers MacColl and Fox had reasonable suspicion sufficient to detain him longer than was necessary to issue his traffic summons and,

[5] *Id.* at 14-15, 28, 42.

[6] D.I. 9 at ¶ 1.

[7] *See* D.I. 9.

[8] *See* D.I. 15.

consequently, any subsequent consent to search his vehicle is tainted by that illegal detention. Winn, therefore, claims that the Officers violated his rights under the Fourth and Fourteenth Amendments to the United States Constitution, Article I, Section 6 of the Delaware Constitution, and DEL. CODE ANN. tit. 11, § 4802 (j).[9]

8. In response, the State argues that the Officers were justified in searching the vehicle because of the vehicle's "involvement in a gun-related arrest" only five days prior.[10] The State contends that an officer has the right to search an individual if "the officer has a reasonable belief that the subject may be armed and dangerous[,]" and that Winn fell into this category. According to the State, the Officers detained Winn only for "a matter of minutes," and therefore Winn's detention was not "unlawfully protracted." Furthermore, even if Winn did not consent to the search, Officer Fox discovered the heroin "in plain view" and, therefore, his finding does not constitute a search under the Fourth Amendment.[11]

A. Propriety of the Extended Police Investigation

9. The first issue confronting the Court is whether the Officers were permitted by the United States or Delaware Constitutions to extend their

[9] D.I. 9 at ¶ 4.

[10] *See* D.I. 21.

[11] *Id.*

investigation of Winn beyond that which was necessary to enforce the traffic law they believed had been violated.

10. A police officer justifiably may stop a motor vehicle that has violated a traffic law.[12] When an officer temporarily detains an individual pursuant to a traffic stop, he or she is temporarily seizing that individual as well as his or her vehicle. Consequently, the seizure is subject to Constitutional limits.[13] The Fourth and Fourteenth Amendments of the Constitution of the United States[14] and Article I, Section 6 of the Constitution of the State of Delaware[15] protect individuals from unreasonable searches and seizures.

11. "The duration and execution of a traffic stop is necessarily limited by the initial purpose of the stop. . . . [A]ny investigation of the vehicle or its occupants beyond that required to complete the purpose of the traffic stop constitutes a separate seizure that must be supported by independent facts sufficient to justify the additional intrusion."[16] In essence, when officers prolong a

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[12] *Caldwell v. State*, 780 A.2d 1037, 1045 (Del. 2001) (citing *Wren v. United States*, 517 U.S. 806, 813-14 (1996)).

[13] *Id.* at 1045-46.

[14] U.S. CONST. amend. IV, XIV.

[15] DEL. CONST. art. I, § 6 ("The people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and no warrant to search any place, or to seize any person or thing, shall issue without describing them as particularly as may be; nor then, unless there be probable cause supported by oath or affirmation.").

[16] *Caldwell*, 780 A.2d at 1047.

suspect's road-side detention in order to investigate further, it becomes a "second detention."[17]

12. In the traffic stop context, not only must just the initial detention be based on reasonable suspicion of a traffic violation, so too must the second detention be based on "specific and articulable facts" that raise an objective suspicion of criminal behavior.[18] In *Caldwell*, the defendant's nervous behavior, movements in his vehicle prior to questioning, and not knowing his passenger's full name were not independent evidence of criminal activity.[19] The Court, therefore, concluded that the Defendant's "protracted and intrusive detention" violated his Fourth Amendment rights under the United States Constitution. The Court found that the evidence seized during the extended detention should be suppressed.[20]

13. The circumstances of the traffic stop here do not support the State's claim that the Officers were justified in extending their seizure of Winn beyond the initial traffic stop. The Officers approach to Winn's vehicle was fairly standard and straightforward. Officer MacColl, the lesser experienced officer, approached the vehicle while Officer Fox stood at its rear. There did not appear to be any real

[17] *Id.* (quoting *Ferris v. State*, 735 A.2d 491, 499 (1999)).

[18] *Id.* at 1046 (citing *United States v. Brignoni-Ponce*, 422 U.S. 873, 880-81 (1975)) (quoting *Terry v. Ohio*, 392 U.S. 1, 16-19 (1968)).

[19] *Id.* at 1050.

[20] *Id.* at 1052.

urgency in the manner in which either officer approached the vehicle. Moreover, Winn, when approached, was asked only to produce routine information: license, registration, and proof of insurance. There is no indication that there was a heightened concern for officer safety.

14. If the Officers' safety was a concern because of their previous encounter with that particular vehicle five days before, and if the Officers had articulated that concern in a meaningful way at the hearing, then they would have been justified at that moment to order Winn out of the vehicle for their own safety. They did not do so. Instead, Officer MacColl testified that, as a matter of routine, and not for any safety concern, he asked Winn whether he was in possession of any "weapons, guns, or bombs." This was a routine question that Officer MacColl regularly asks drivers when he effects a traffic stop; the question was not prompted by anything Winn said or did or by any other particular facts or circumstances. It was not until several minutes later that Officer MacColl decided to conduct a patdown of Winn, at which time he admittedly did not fear for his safety.[21]

15. This extension of an investigation after a vehicle stop, beyond the time necessary to enforce the seatbelt violation, is contrary to the holding in *Caldwell*. Winn's detention became a more "protracted and intrusive detention" than the Fourth Amendment or Delaware's constitutional counterpart would permit. Since

[21] D.I. 23 at 20.

there was insufficient criminal behavior "independent" of the traffic violation to justify the extended detention, this Court must, under *Caldwell*, suppress the evidence seized during the "second detention."[22]

B. Consent to Search the Vehicle

16. Assuming *arguendo* that the Officers lawfully prolonged their detention of Winn, the Court must discern whether or not Winn gave consent to search the vehicle. As noted in *State v. Harris,*[23] "[t]he prosecution has the burden of proving that the consent was, in fact, freely and voluntarily given[,]" and was not the product of duress or coercion, in order for the consent to be constitutionally permissible.[24] The issue of consent is a question of fact that must be determined from the "totality of the circumstances."[25] Consent must be "'unequivocal and specific' and 'freely and intelligently' given."

17. Although the Court recognizes that silence alone is not *per se* evidence of a lack of consent[26] – that is, one can impliedly consent to a search when taking

[22] The fact that Winn arguably consented to the search does not alter the analysis. Consent offered by a person who is being detained illegally is "tainted by the illegality." *Harris*, 642 A.2d at 1247 (Del. Super. Ct. 1993). And, a police officer cannot legally justify initiating a search based on "tainted" consent. *Huntley*, 777 A.2d at 257. *See also Caldwell*, 780 A.2d at 1052.

[23] *Harris*¸ 642 A.2d 1242.

[24] *Id.* at 1245-46.

[25] *Id. See also Huntley v. State*, 777 A.2d 249, 257 (Del. Super. Ct. 2000) (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973)).

[26] *See Harris*, 642 A.2d at 1246. *See also United States v. Wilson*, 413 F.3d 382, 388 (3d Cir. 2005).

into account the context of the circumstances[27] – the legal standard nevertheless remains the same and requires a demonstration of unequivocal consent.[28] In this instance, the State has not proven, by a preponderance of the evidence, that Winn's consent was "unequivocal and specific and freely and voluntarily given."[29] While Winn's silence is not dispositive of a lack of consent, his silence (as testified to by Officer MacColl) when coupled with his testimony regarding the circumstances of the search and the fact that there was no effort by the police to clarify his arguably equivocal assertion of consent, satisfies the Court that the State has not carried its burden. That is not to say that the Court is discounting the Officers' testimony in this regard or believing one party over another. Rather, considering the totality of the circumstances, including Winn's testimony, the Court is not satisfied that the evidence supports the notion that Winn's consent was consensual, "unequivocal and specific," and "freely and intelligently given," as required by Delaware law.

18. The Court has carefully reviewed the record and has determined that the Officers' decision to detain Winn in order to question him beyond the scope of his traffic violation infringed on his Constitutional rights against unlawful searches and seizures. The Officers did not have reasonable suspicion, in the form of newly discovered information, linking Winn to other criminal activity in order to detain

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[27] *Id.*

[28] *See Harris*, 642 A.2d at 1246.

[29] *Id.*

him longer than necessary to enforce the traffic violation. Nevertheless, even if the State was able to establish that the Officers lawfully detained Winn, the State has failed to meet its burden of establishing that Winn consented to the search of the vehicle. Neither Winn's words nor his actions clearly demonstrated his voluntary consent to a search of the vehicle. Accordingly, for both reasons, Winn's Motion to Suppress is **GRANTED**.

IT IS SO ORDERED.

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Judge Joseph R. Slights, III

Original to Prothonotary